



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 12, 2023

IN THE MATTER OF:

Appeal Board No. 629393

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 629393 and 629394, the employer appeals from the decisions of the Administrative Law Judge filed May 5, 2023, which overruled the employer's objections that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause; and that the claimant should be held ineligible to receive benefits because the claimant was not available for employment, and sustained the initial determinations holding the claimant eligible to receive benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the employer.

Our review of the record reveals that these cases should be remanded to hold a further hearing. Additional testimony and other evidence are needed to determine whether the claimant voluntarily separated from employment with good cause, and whether the claimant was available for employment.

Specifically, and in light of the claimant's testimony that her decision not to return to work was related to the working conditions at the school where she had been assigned since September 2022, and documents in the file that support that testimony, the parties are placed on notice that the hearing Judge will also consider whether the claimant's decision not to return to work was based upon the work conditions and environment at the school where she was assigned; in particular, the principal's unwillingness to utilize her in the position for which she was trained and licensed, and failure or inability to provide assistance to the claimant when she encountered difficulties dealing

with a full classroom of students; and whether the claimant took reasonable steps to preserve her job.

The claimant shall be questioned to determine the "final straw" that led to her January 30, 2023 filing of a claim for unemployment benefits while she was on an approved medical leave of absence, and her intention not to return to work for the employer, as the claimant testified at the hearing. As part of this questioning, the Department of Labor questionnaire, signed by the claimant on February 7, 2023 (pages 22-26 of the 47-page hearing file), and the summaries of telephone calls between the claimant and Department of Labor representatives on March 1 and 2, 2023 (pages 12 and 13 of the 47-page file) shall be received into the record after the appropriate confrontation and opportunity for objection.

The parties shall also be questioned regarding what attempts, if any, the claimant made prior to January 2023 to seek a different position or a transfer to another school where her license would be utilized, and what, if any, other steps the claimant took to preserve her employment prior to deciding she would not return to work for the employer. The parties shall be questioned regarding the employer's response to any such attempts made by the claimant.

The employer is directed to produce Principal Pembroke, and any other individual or individuals with firsthand knowledge of the circumstances surrounding the claimant's employment and separation from employment. Such witnesses shall be prepared to address the claimant's contentions regarding the principal's response to the claimant's requests for assistance, and to address why the claimant was being utilized in a position for which she was not licensed.

The parties shall also be prepared to provide testimony regarding where, and in what position, the claimant was placed from 2019 until September 2022 when she was assigned to the school where she was working as of her last day of work.

Further, on the issue of the claimant's availability, additional evidence is needed to determine whether the claimant was ready, willing and able to work as of January 30, 2023, the date she filed her claim for unemployment benefits, and thereafter. The parties are therefore directed to produce the doctor's note provided by the claimant that resulted in the granting of the claimant's leave of absence from January 17, 2023 through June 30, 2023.

The claimant is also directed to produce the note she testified her doctor wrote in January 2023 stating that she should be provided assistance in the classroom because the working conditions were affecting her health, and any documentation on which the claimant relies to support her position that she was available to work. The documentation produced shall be received into the record after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to produce the documentary evidence and witnesses directed herein may result in the hearing Judge or the Board taking an adverse inference against that party, and deciding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive any other evidence into the record that is needed to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of the claimant's eligibility, and the employer's objections that the claimant voluntarily separated from employment without good cause, and was not available for employment, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER